

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

ASHLEY JENSEN FRAZIER

MOVANT

v.

Case No. 6:18-cr-60004

UNITED STATES OF AMERICA

RESPONDENT

ORDER

Before the Court is the Report and Recommendation filed December 16, 2019, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 79). Judge Bryant recommends that Movant Ashley Jensen Frazier's Motion for Leave to Appeal *in forma pauperis* (ECF No. 77) be granted. Judge Bryant further recommends that Frazier be denied a Certificate of Appealability.

On April 17, 2019, Frazier was sentenced to forty-six months' imprisonment, after pleading guilty to distribution of methamphetamine. (ECF No. 61). On August 7, 2019, Movant filed a motion seeking relief pursuant to 28 U.S.C. § 2255. (ECF No. 70). Frazier was then appointed Counsel, and on September 30, 2019, filed her Motion to Withdraw her Section 2255 Motion. (ECF No. 74). On November 4, 2019, the Court granted Frazier's Motion to Withdraw and dismissed her Section 2255 Motion without prejudice. (ECF. No. 76). Frazier now seeks to appeal that dismissal and moves to be allowed to proceed *in forma pauperis*.

After review of the instant motion, Judge Bryant recommends granting Frazier leave to appeal *in forma pauperis*. However, Judge Bryant found that Frazier has made no substantial showing of the denial of a constitutional right, as required by 28 U.S.C. 2253(c) because she voluntarily dismissed her § 2255 Motion. Consequently, Judge Bryant also recommends that no

Certificate of Appealability be issued in this matter.

Plaintiff has not filed objections to the Report and Recommendation and her time to do so has passed. This is insufficient to trigger *de novo* review, and the Courts finds no clear error in the Report and Recommendation. Therefore, the Court adopts the Report and Recommendation (ECF No. 79) *in toto*.

Accordingly, Plaintiff's Motion for Leave to Appeal *in forma pauperis* (ECF No. 77) should be and hereby is hereby **GRANTED**. Pursuant to the Prison Litigation Reform Act, the Clerk is **DIRECTED** to collect the \$505 filing fee from the Plaintiff. However, the Court declines to issue Frazier a Certificate of Appealability.

IT IS SO ORDERED, this 9th day of January, 2020.

/s/ Susan O. Hickey
Susan O. Hickey
Chief United States District Judge